

as from a decree in an ordinary controversy between individuals; because the decision on a caveat was not, in any way, conclusive

that the said Hemsley hath alleged the said two hundred and thirty acres of cultivated land is part of and included within the lines of a greater tract called Coursey upon Wye, heretofore surveyed for Col. Coursey, deceased, and his lordship's letters patent had thereon, more than twenty years past for the same; and that the said William Coursey, by his last will and testament, devised part of the tract of land aforesaid, called Coursey upon Wye, unto her said son William Coursey, a minor.

Thereupon the said Vincent Hemsley in justification of his resurvey and return aforesaid alleged in the first place, that notwithstanding the cultivated land, by him lately taken up, had been heretofore surveyed by Col. William Coursey, in his life-time, as is suggested, and was a part of a greater tract called Coursey upon Wye; yet that the same survey, in law, and according to the strict rules of the office, is deemed and held to be null and invalid as if such survey had never been made; and as all other pretended surveys are deemed to be when made and done without sufficient authority from his lordship's land office. And further alleged, that the land warrant, upon which the said survey was grounded, was upon assignment from Col. Peter Lawyer, for nine hundred and twenty acres, part of a warrant for two thousand three hundred and forty-five acres, dated the 27th of February, 1694, which said warrant, upon inspection, was found to have been executed upon other land before the time of the assignment aforesaid, as appears by an entry upon the land records, where the said warrant is recorded; and further said, that the case of the said warrant is not at all mended by what follows upon record, viz: that new caution was given for the same. Seeing that the caution is not said to be given by Col. William Coursey, nor by any other person for his use; and, consequently, no warrant at all to affect that, nor any other lands, nor gave any authority to the surveyor for laying out the tract aforesaid, called Coursey upon Wye; which said tract of land, as the said Hemsley alleged, for the imperfections aforesaid, remained still to be vacant, and subject to his special warrant, laid upon the cultivation thereof as aforesaid.

*Secondly.*—It was alleged, that although the warrant upon which the surveyor had laid out Coursey upon Wye, should be held and deemed to be good and sufficient warrant to the surveyor for the taking up of so much of that tract called Coursey upon Wye, as had not before been cultivated; yet that the survey thereof, as far as it related to any part of the cultivated lands must necessarily be null and void; such lands being excepted in all common warrants, according to the usual form, "lands not already laid out for, nor cultivated by any person, nor lands reserved for his lordship's use;" but that the lands so by him, the said Hemsley, taken up, by virtue of his lordship's special warrant aforesaid, were cultivated at and before the time of the survey of Coursey upon Wye, no one will pretend to deny. Wherefore as the said lands would not be affected by the common warrant aforesaid, allowing it to be a good warrant, which, however, he doth not grant, he prays that his lordship's letters patent may be made out to him, the said Vincent Hemsley, according to the course of the office, for the two hundred and thirty acres of cultivated vacant land, according to his certificate of survey thereof already made and returned into his lordship's land office.

Whereupon the complainant replied to the first allegation, and saith, true it is that the warrant upon which the survey of the tract of land called Coursey upon Wye, is grounded, was by an assignment from Col. Peter